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In the Supreme Court of the United States

OCTOBER TERM, 1979

FEODOR FEDORENKO, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES

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QUESTIONS PRESENTED

1. Whether petitioner's failure to disclose, in obtaining a visa to enter the United States in 1949 and in becoming a naturalized citizen in 1970, that he had served as an armed guard at the Treblinka concentration camp during the Nazi occupation of Poland was a "material" misrepresentation of fact requiring his denaturalization under 8 U.S.C. 1451(a).

2. Whether a district court possesses an equitable discretion under 8 U.S.C. 1451(a) to excuse a material misrepresentation of fact and thus to allow a person who procured his naturalization illegally or by fraud to retain United States citizenship.

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The opinion of the court of appeals (J.A. 106–119) is reported at 597 F.2d 946. The opinion of the district court (J.A. 55–103) is reported at 455 F. Supp. 893.

JURISDICTION

The judgment of the court of appeals (J.A. 120) was entered on June 28, 1979. A petition for rehearing was denied on August 15, 1979 (J.A. 121). The petition for a writ of certiorari was filed on October 30, 1979, and was granted on February 19, 1980. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY PROVISION INVOLVED

Section 340(a) of the Immigration and Nationality Act of 1952, 8 U.S.C. 1451(a), provides in pertinent part:

> It shall be the duty of the United States attorneys * * * to institute proceedings * * * in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization on the ground that such order and certificate of naturalization were illegally procured or were procured by concealment of a material fact or by willful misrepresentation * * *.

STATEMENT

The United States brought this action in the United States District Court for the Southern District of Florida under 8 U.S.C. 1451(a) to revoke the citizenship of petitioner, who was born in the Ukraine in 1907, admitted to the United States in 1949 under the Displaced Persons

Act, ch. 647, 62 Stat. 1009, and naturalized in 1970. The complaint alleged that petitioner had served during 1942 and 1943 as an armed guard at the Nazi concentration camp in Treblinka, Poland, where he had beaten and shot Jewish prisoners, but that, in order to obtain a visa in 1949, petitioner falsely stated to American immigration officials that he had spent the war years as a farmer in Poland and a factory worker in Germany. The complaint further alleged that petitioner had continued this deception when he applied for and received American citizenship in 1970. Accordingly, the complaint charged that petitioner had been ineligible for admission to this country and, by concealing the facts that disqualified him, had illegally and fraudulently procured his citizenship (J.A. 4–10).

1. The evidence at trial showed that petitioner was captured by the Germans in 1941 while serving in the Soviet army (R. 1258–1261). After being held in a series of camps, petitioner was selected to go to the German camp at Travnicki, Poland, a training station for concentration camp guards (R. 1275–1276, 1284, 1435). Petitioner was eventually assigned to the death camp at Treblinka, where he was issued a rifle and assigned to guard duty (R. 1297–1298, 1309, 1439–1440).

Treblinka was described by the district court as "a human abattoir" (J.A. 66 n.12). Thousands of persons were brought to Treblinka each day to be murdered.[1] Petitioner was stationed at Treblinka for about a year, during which time he was awarded good conduct stripes and was given the rank or title of "oberwachmann" because of his profi-

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[1] Historians estimate that 800,000 people were murdered at Treblinka. See L. Dawidowicz, *The War Against the Jews, 1933–1945*, 199–200 (Bantam ed. 1976); R. Hilberg, *The Destruction of the European Jews* 572–586, 618–635 (1961). See also J.A. 68 n.12.

cient service (J.A. 47–48; R. 1499–1500). Petitioner repeatedly acknowledged in his testimony that he knew that the Jews who arrived at Treblinka were being murdered (J.A. 43, 45, 46).

In August 1943, the prisoners at Treblinka staged an armed uprising, and many escaped. As a result, the camp at Treblinka was closed, and petitioner was transferred to Danzig and Poelitz, where he continued to serve as a guard (R. 1358–1363, 1506). Petitioner eventually was transferred to Hamburg, where he served as a warehouse guard until British forces entered that city in 1945 (R. 1363–1365). Before the British arrived, petitioner discarded his uniform and was able to pass as a civilian. For the next four years, petitioner worked in Germany as a laborer (J.A. 51; R. 1365–1366).

In October 1949, petitioner applied for admission to the United States as a displaced person. The Displaced Persons Act, ch. 647, 62 Stat. 1009–1014, had been enacted by Congress in 1948 to enable refugees who had been driven from their homelands during and after World War II to emigrate to the United States without regard to traditional immigration quotas. Under that Act, "eligible displaced persons" were those displaced persons or refugees, defined in the Constitution of the International Refugee Organization of the United Nations (IRO) as the "concern" of the IRO (Section 2, 62 Stat. 1009).[2] The IRO Constitution (62 Stat. 3037–3055) provided that the following persons would not be considered the "concern" of the IRO:

1. War criminals, quislings and traitors.
2. Any other persons who can be shown:

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[2]The IRO Constitution was signed by the United States on December 16, 1946 (T.I.A.S. No. 1846) and became effective on August 20, 1948. See 62 Stat. 3037.

(*a*) to have assisted the enemy in persecuting civil populations of countries, Members of the United Nations; or

(*b*) to have voluntarily assisted the enemy forces since the outbreak of the second world war in their operations against the United Nations.

Annex I, Part II, 62 Stat. 3051–3052.[3] Section 10 of the Displaced Persons Act placed the burden of proving eligibility for admission under the Act on the person seeking admission and provided that "[a]ny person who shall willfully make a misrepresentation for the purpose of gaining admission into the United States as an eligible displaced person shall thereafter not be admissible into the United States." 62 Stat. 1013.

The documentary evidence in this case demonstrates—and petitioner admitted at trial (J.A. 51–54)—that petitioner willfully falsified his application for a visa by misstating his whereabouts during the war years and omitting any reference to his Nazi service. Petitioner told investigators from the United States Displaced Persons Commission in 1949 that he had been a farmer in Sarny, Poland, from 1937 until March 1942, and that he had then been deported to Germany and employed forcibly as a factory worker in Poelitz until the end of the war, when he fled to Hamburg (J.A. 26, 51–52).[4] Petitioner also signed a sworn visa application stating that he had been in Poelitz from 1942 to 1945 (J.A. 29). Petitioner was thereupon issued a visa under the Displaced Persons Act. He sailed to

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[3]The IRO's footnote to 2(*b*) explained (62 Stat. 3052):

> Mere continuance of normal and peaceful duties, not performed with the specific purpose of aiding the enemy against the Allies or against the civil population of territory in enemy occupation, shall not be considered to constitute "voluntary assistance." * * *

[4]Petitioner also gave his birthplace as Sarny, Poland, although he had been born in the Ukraine (J.A. 26).

the United States the following month and was admitted for permanent residence (J.A. 85).

After his admission to the United States in 1949, petitioner lived in Connecticut and led an uneventful and law-abiding life as a factory worker. In 1969, he applied for naturalization at the Immigration and Naturalization Service office in Hartford. The application (J.A. 32–35) made the following demand: "List your present and past membership in every organization, association * * * or similar group in the United States and in any other place, and your foreign military service." Petitioner answered: "Russian Military Service, 1941 to 1941" (J.A. 33).

On March 2, 1970, petitioner appeared before Harry Zimon, an INS naturalization examiner, for a preliminary examination on his eligibility for citizenship (C.R. 108–109.)[5] Zimon placed petitioner under oath and went over each question and answer on the naturalization application with him (C.R. 110–115). Petitioner made no mention of his service with the Germans at Treblinka or anywhere else (C.R. 126). At the conclusion of the examination, petitioner signed an affidavit that the answers he had given were "true to the best of my knowledge and belief" (J.A. 35; C.R. 121–122).

On the basis of the application and interview, Zimon recommended that the petition for naturalization be granted (C.R. 126). Zimon testified, however, that if petitioner had disclosed that he had served as an armed guard for or with the Germans during the war, or that he had served as a guard at Treblinka, Zimon would have refrained from making any recommendation until an investigation could be made "to ascertain all facts" (C.R. 127,

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[5] C.R. refers to the portion of the record containing testimony taken in Waterbury, Connecticut, on May 3 and 4, 1978. The trial resumed in Florida on May 30, 1978.

147–148). As it was, Zimon did question petitioner on his Soviet military service, but did not pursue petitioner's post-1941 whereabouts or military service, relying on the false information contained in the Displaced Persons Commission report (C.R. 216–217).

At the final hearing held before the naturalization examiner, petitioner was given a second opportunity to add any information or to correct any statements, but he volunteered nothing further (C.R. 214–215). His petition for naturalization was granted in due course by the Superior Court of New Haven County on April 23, 1970, and petitioner became an American citizen (J.A. 36).

2. The significance of petitioner's role as a guard at the Treblinka concentration camp was described by Kempton Jenkins, a career foreign service officer who had served as a vice-consul in Germany administering the Displaced Persons Act following World War II. Jenkins had been trained to administer the Act, had passed on approximately 5,000 visa applications under the Act, and was proffered by the government and accepted by the court, without objection, as an expert witness on the interpretation and application of the Act and on social and political conditions in Europe after the war (J.A. 37–38; R. 712, 720–721, 726–727).

Jenkins testified that if there were any indication that an applicant for a Displaced Persons Act visa "had served or been involved in" any concentration camp, processing of his case would have been suspended and a vigorous investigation conducted (J.A. 38). If it were determined that the applicant had served as a guard in a concentration camp, he would have been found ineligible for the visa as a matter of law (J.A. 38–39; R. 768, 822). This was so whether or not the guard had committed war crimes at the camp, because the mere fact of service as a guard was con-

sidered to constitute either persecution of civilians or voluntary assistance to the enemy (or both), either of which rendered an applicant ineligible under the Act (R.768, 797–798). See pages 3–4, *supra*. Jenkins testified that he was unaware of any instance in which a concentration camp guard had received a visa at any displaced persons camp (R. 787–788).[6] Sometimes, concentration camp survivors recognized an applicant as a guard and identified him to consular officials. The accusation was then investigated and, if found to be true, the applicant was confronted with it (R. 804). In all such cases, the visa was denied (R. 807, 826–827).

Moreover, Jenkins testified that not a single guard thus confronted ever claimed that he had served involuntarily; each had his own reasons for serving but each admitted that his service was voluntary (R. 807–808). Indeed, the experience of the vice-consuls indicated that camp guards always served voluntarily (R. 756, 772, 795–796), and the administration of the Act was such that no defense of involuntariness could possibly have been sustained (R. 822–826). Therefore, even if an applicant had claimed that his service was involuntary, he would have been denied a visa (R. 824–826) In short, "there was never a question raised" about the eligibility of concentration camp guards under the Displaced Persons Act; the Act was consistently applied to deny visas to any person who had served as a guard (R. 805–807).

Jenkins also described the elaborate system of interviews and investigations used to screen visa applicants under the Act. Each applicant was interviewed first by the IRO, then by a representative of the Displaced Persons

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[6] As a matter of administrative practice, when one vice-consul encountered an applicant who was shown to be a camp guard, he circulated the case file among the other vice-consuls (R.826). See note 29, *infra*.

Commission, then by one of the State Department's vice-consuls, and finally by the INS. Every available documentary file was checked in this process (R. 728–733). Nevertheless, Jenkins testified that if an applicant lied "and there was no negative information in any of these files on that person, there was virtually nothing for us to rely upon except the person's own declaration" (R. 738).

Jenkins' testimony also established that petitioner's falsehoods in his visa application—his statements that he had only been in Sarny, Poland, and Poelitz, Germany, during the war—could not have been the result of inadvertence or misunderstanding. The vice-consul went over each question with the applicant in his native language (R. 747–748). Jenkins testified that "we bent over backwards in interrogating [each] person to make sure he understood what he was doing" (R. 746).

3. Six survivors of Treblinka testified at trial to specific acts of violence that they saw petitioner commit at the death camp.[7]

Eugen Turowski, from a distance of five or six meters, saw petitioner shoot Jewish prisoners at the burning pit known as the "lazaret" (R. 134–136, 207). He also saw petitioner whip prisoners on arrival and shoot prisoners who had been captured after escape attempts (R. 143–145). Schalom Kohn testified that he saw petitioner almost every day for the first few months Kohn was at Treblinka (R. 262–263) and that petitioner beat him with an iron-tipped whip (R. 267–268). Kohn also saw petitioner whip arriving prisoners (R. 268) and shoot prisoners who were brought to the lazaret (R. 271, 322–323). Joseph Czarny

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[7]Each witness identified petitioner, both before trial and at trial, from a photo spread containing petitioner's 1949 visa photo (R. 59–61, 102–103, 601–602, 900–901, 907–909, 938, 968–969 (pre-trial); R. 147, 265, 429–432, 635–636, 973, 1074–1075 (trial)).

testified that he saw petitioner beat arriving prisoners (R. 434) and that he once saw petitioner shoot a prisoner at the lazaret (R. 435–442).

Gustaw Boraks testified that he repeatedly saw petitioner come to the camp's hair-cutting area and chase women to the gas chambers, beating them as they went (R. 886–888). On one occasion Boraks heard a shot and ran outside to see petitioner, with a gun drawn, standing within half a meter of a wounded woman (R. 630–634). Sonia Lewkowicz testified that she saw petitioner shoot a Jewish prisoner (R. 973, 1014–1015, 1039–1040). Pinchas Epstein testified that petitioner once approached a friend of Epstein's, made him crawl naked on all fours, and then shot him in the head, killing him instantly (R. 1056–1067). Epstein knew, "[w]ithout any question of a doubt" (R. 1070), that it was petitioner who had killed his friend.

4. Petitioner testified that he served as a guard at Treblinka, that he was awarded one or two stripes because of his good service (J.A. 40–41, 47–50) and that he knew that the Jews who were brought to Treblinka were being exterminated (J.A. 42–46). He testified, however, that he was ordered to go to Treblinka (R. 1298) and that he never beat or shot any Jewish prisoners (R. 1539), although he admitted shooting in the direction of escaping prisoners during the August 1943 uprising (J.A. 42, 50–51, 54). Petitioner testified that the Russian guards far outnumbered the German soldiers at Treblinka (R. 1444–1445) and that he was allowed to leave the camp regularly, but that he never tried to escape (R. 1467–1468, 1497, 1508). Petitioner also admitted that he willfully misrepresented his 1941–1945 whereabouts to the Displaced Persons Commission and to the vice-consul who processed his visa application (J.A. 51–54).

5. The district court entered judgment in favor of petitioner (J.A. 55–103). The court found that petitioner had served as an armed guard at Treblinka (J.A. 67) and that he lied when he applied for a visa to come to the United States by stating that he had been a farmer and factory worker during the war (J.A. 84–85, 91, 93). The court found, however, that petitioner's service at Treblinka was involuntary (J.A. 89–91). The court also concluded that the government had not proven that petitioner had committed war crimes at Treblinka because the court did not credit the Treblinka survivors' identification of petitioner or their testimony (J.A. 73–80).[8]

In light of these findings, the court concluded as a matter of law that petitioner's deception was not "material" within the meaning of 8 U.S.C. 1451(a). The court ruled that both tests of materiality set out in *Chaunt* v. *United States*, 364 U.S. 350 (1960), require that the government prove that "the true facts * * * warrant[ ] denial of citizenship" (J.A. 94). Although the court found that, had petitioner told the truth, consular authorities "certainly" would have conducted an investigation into the circumstances of petitioner's service at Treblinka (J.A. 93), it concluded that the government had not proven that petitioner's service was voluntary and thus that the truth would have required denial of citizenship (J.A. 89–91, 94–95).[9]

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[8]The court rejected the photo identification because the photo spreads were "impermissibly suggestive" (J.A. 76) and rejected the courtroom identifications because they were allegedly tainted by the photo spreads and by discussion of the case among the witnesses (J.A. 76–78). The court remarked that "the Government's evidence left the court with suspicions about whether defendant participated in atrocities at Treblinka but they were only suspicions" (J.A. 80).

[9]The court thus rejected Kempton Jenkins' uncontroverted testimony (see pages 6–8, *supra*) that no one who had served as a concentration camp guard would have been eligible for admission to the United States as a displaced person (J.A. 87, 89).

In addition, the court ruled that, even if it had found that petitioner had willfully concealed material facts, "equitable and mitigating circumstances" (J.A. 102) required that petitioner be permitted to retain his citizenship. Specifically, the court referred to the inconclusive evidence of petitioner's commission of war crimes and the uncontroverted evidence that he had been a law-abiding resident since coming to the United States (J.A. 103).

6. The court of appeals reversed (J.A. 106–119). Noting that *Chaunt* held that a misrepresentation is material if the government proves "either (1) that facts were suppressed which, if known, would have warranted denial of citizenship or (2) that their disclosure might have been useful in an investigation possibly leading to the discovery of other facts warranting denial of citizenship" (364 U.S. at 355), the court of appeals held that the district court had misinterpreted the second *Chaunt* test in ruling that it required proof of ultimate facts warranting denial of citizenship (J.A. 111–113). Rather, the court of appeals held that "the key to the second test is whether disclosure would have led the government to make an inquiry that *might* have resulted in denial of citizenship" (J.A. 113; emphasis added).

Applying the proper materiality test to the facts of this case, the court of appeals found "[t]he evidence before the district court clearly and convincingly proved that, had [petitioner] disclosed his guard service, the American authorities would have conducted an inquiry that might have resulted in denial of a visa. [Petitioner], then, was guilty of making a misrepresentation and concealment of material facts within the meaning of *Chaunt*" (J.A. 117; footnote omitted). The court of appeals further held (J.A. 118–119) that the district court erred as a matter of law in concluding that it had authority to enter judgment for petitioner

based on equitable considerations even if the materiality of his misrepresentation had been proven, finding that "[t]he denaturalization statute, 8 U.S.C. § 1451, does not accord the district courts any authority to excuse the fraudulent procurement of citizenship" (J.A. 119).[10]

SUMMARY OF ARGUMENT

Citizenship that is "illegally procured" or procured through "misrepresentation" or "concealment of a material fact" must be revoked under 8 U.S.C. 1451(a). Petitioner's citizenship should be revoked under either statutory theory. If petitioner gained an immigrant visa by concealing a material fact, he was never lawfully admitted to the United States. Hence, he lacked a statutory prerequisite for naturalization under 8 U.S.C 1427(a), and his citizenship was illegally procured. In addition, because his naturalization was made possible by his misrepresentation when applying for a visa, which was perpetuated in his application for naturalization, petitioner's citizenship was also procured by misrepresentation or concealment. Because petitioner has admitted that he concealed the fact of his guard service at the Nazi concentration camp at Treblinka, the critical question under either theory is whether that concealment was material.

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[10] Because it disposed of the case on the ground that the district court had misinterpreted the second *Chaunt* test, the court of appeals did not rule on the government's contention that it had also proven its case under the more exacting standard of the first *Chaunt* test, *i.e.*, that Jenkins' uncontroverted testimony that concentration camp guards were never issued visas established that petitioner's false statements suppressed facts that, if known, would have warranted denial of a visa. Similarly, the court of appeals did not rule on the government's contention that the district court erred in finding that petitioner had not committed war crimes at Treblinka. (The district court had discounted the eyewitness testimony because it held that the photo spreads were impermissibly suggestive and the courtroom identifications otherwise tainted.)

I.

A. *Chaunt* v. *United States*, 364 U.S. 350 (1960), held that concealed facts are material under 8 U.S.C. 1451(a) if they meet either of two tests: (1) the concealed facts, if known, would have warranted denial of citizenship or (2) "their disclosure might have been useful in an investigation possibly leading to the discovery of other facts warranting denial of citizenship." 364 U.S. at 355. The district court held that the second *Chaunt* test requires the government to prove not only that a truthful disclosure would have prompted an investigation but also that ultimate facts warranting denial of citizenship exist and might have been uncovered by that investigation. As the court of appeals noted, however, this interpretation "destroy[s] the utility" of the second *Chaunt* test (J.A. 113). Rather, the second *Chaunt* test of materiality requires that the government show only that the concealed facts, if revealed, would have raised a substantial question as to eligibility for citizenship such that they would have prompted an investigation that might have uncovered disqualifying facts.

The first *Chaunt* test places a severe burden on the government to prove the existence of ultimate facts demonstrating that a person is ineligible for citizenship. The manifest purpose of the second *Chaunt* test is to permit denaturalization on the basis of fraud without the necessity of proving conclusively that the person was not eligible for citizenship. Under this test, a misrepresentation is material if the truth, while not itself grounds for denial of citizenship, would have prompted an investigation that might have uncovered ultimate disqualifying facts. If, as petitioner contends, proof of a disqualifying fact is required under either test, the second *Chaunt* test is essentially a meaningless duplication of the first.

Adoption of petitioner's interpretation also would defeat Congress' demonstrated intent to discourage fraud in immigration and naturalization proceedings. If the government is forced to prove the existence of ultimate facts warranting denial of citizenship in every denaturalization proceeding, an applicant would have much to gain and nothing to lose by lying about his background in an effort to avoid an investigation into his past that might lead to a denial of citizenship. Even if the applicant's lie is later discovered, the passage of time will have made it more difficult for the disqualifying facts to be uncovered. Moreover, in the interim the burden of proof will have shifted from the applicant to the government, which must demonstrate his ineligibility in a denaturalization proceeding by clear and convincing evidence.

This case illustrates the pernicious consequences of petitioner's approach. Assuming *arguendo* that petitioner would have been admitted to the United States in 1949 had an investigation proven that his Treblinka service was involuntary, petitioner's misrepresentation prevented such an investigation from being conducted by the appropriate authority, the Displaced Persons Commission, at a time when witnesses were available and memories fresh. Now that petitioner's lie has been discovered and a definitive investigation is no longer possible, he asks that the courts assume that the investigation would have exonerated him. Congress cannot have intended a rule that would so reward deception in the immigration and naturalization process.

Indeed, petitioner's position not only frustrates congressional intent to discourage fraud but also violates the axiom that a statute should be construed to give meaning to all of its parts. 8 U.S.C. 1451(a) establishes two

grounds for denaturalization—illegal procurement and misrepresentation of a material fact. Petitioner contends that in proving a material misrepresentation the government must first prove ultimate facts warranting denial of citizenship. Proof of these facts, however, would also demonstrate that the defendant was ineligible for citizenship and, hence, that his citizenship was illegally procured. The misrepresentation provision of the statute would therefore become superfluous.

Finally, petitioner's interpretation gives the term "material" in 8 U.S.C. 1451(a) a definition far narrower than it receives in criminal statutes. For example, a false statement before the grand jury is material for purposes of a perjury prosecution whenever it has a tendency to influence the investigation, even if it does not actually affect the investigation or the grand jury's ultimate determination. Petitioner thus contends that Congress intended a false statement made by an applicant for naturalization to be material for purposes of criminal liability but not for the civil consequences of denaturalization.

B. Under the appropriate standard, it is clear that petitioner's misrepresentation was material. Petitioner admitted that he "willingly" misrepresented his whereabouts during the war. Furthermore, expert testimony not contradicted at trial established that petitioner would have been denied a visa if he had divulged that he had served as a guard at Treblinka. Accordingly, petitioner's misrepresentation was material under the first *Chaunt* test because the concealed fact, in and of itself, would have warranted denial of citizenship.

As the court of appeals correctly held, the district court's findings also establish that the misrepresentation was material under the second *Chaunt* test. The district court found that disclosure of petitioner's Treblinka serv-

ice "certainly would have prompted an investigation" into the voluntariness of his service and whether he committed atrocities (J.A. 93).

II.

Once a district court determines that a person willfully misrepresented a material fact in procuring his citizenship, it has no power to refuse to revoke that citizenship for equitable reasons. Courts may not alter the requirements established by Congress for immigration and naturalization.

In any event, even if courts possess an equitable discretion in this area, exercise of it on petitioner's behalf would be an abuse of discretion. Substantial evidence indicates that petitioner committed murder and other atrocities at Treblinka, and petitioner has admitted shooting in the direction of prisoners and repeatedly lying about his background. Petitioner's record as a law-abiding resident in the United States cannot weigh against this past as an equitable consideration in his favor; obedience to the law is the minimum expected of all citizens and aliens. Violation of the naturalization laws of the United States should not be excused merely because the individual has not subsequently committed any crimes.

ARGUMENT

PETITIONER SHOULD BE DENATURALIZED BECAUSE OF HIS FRAUDULENT CONCEALMENT OF HIS SERVICE AS A CONCENTRATION CAMP GUARD

A naturalized citizen may lose his citizenship only if the government can prove that the naturalization was "illegally procured or [was] procured by concealment of a material fact or by willful misrepresentation." 8 U.S.C.

1451(a).[11] This proof must be by clear and convincing evidence. *Chaunt* v. *United States*, 364 U.S. 350, 353 (1960); *Schneiderman* v. *United States*, 320 U.S. 118, 125, 158 (1943). We submit that the government has met this standard in this case and has demonstrated by clear and convincing, indeed undisputed, evidence that petitioner's naturalization was procured both illegally and by fraud.

Citizenship is illegally procured if "some statutory requirement which is a condition precedent to naturalization is absent at the time the petition [for naturalization is] granted." H.R. Rep. No. 1086, 87th Cong., 1st Sess. 39 (1961). See *Rogers* v. *Bellei*, 401 U.S. 815, 830 (1971); *United States* v. *Ginsberg*, 243 U.S. 472, 475 (1917). One statutory requirement is that a person be "lawfully admitted to the United States for permanent residence." 8 U.S.C. 1429, 1427(a). Petitioner was not "lawfully admitted" because he misrepresented his whereabouts during the war in order to obtain an entry visa, thus making him ineligible for admission under Section 10 of the Displaced Persons Act.[12] Hence, his naturalization was illegally pro-

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[11] This case, of course, does not involve the situation where a citizen surrenders his citizenship by expatriation, which requires proof of the citizen's intent. See *Vance* v. *Terrazas*, No. 78-1143 (Jan. 15, 1980). It is well-established that "naturalization unlawfully procured can be set aside" regardless of intent. *Afroyim* v. *Rusk*, 387 U.S. 253, 267 n.23 (1967).

[12] Section 10 provided that "[a]ny person who shall willfully make a misrepresentation for the purpose of gaining admission into the United States as an eligible displaced person shall thereafter not be admissible into the United States." 62 Stat. 1013. In addition, at the time of petitioner's entry, Section 13(a) of the Immigration Act of 1924, ch. 190, 43 Stat. 153, 161 (repealed in 1952), provided that "[n]o immigrant shall be admitted to the United States unless he (1) has an unexpired immigration visa * * *." The courts consistently held that Section 13 required a valid visa and that a visa obtained by a material misrepresentation was not valid. See, *e.g.*, *Ablett* v. *Brownell*, 240 F.2d 625, 629 (D.C. Cir. 1957); *United States ex rel. Jankowski* v. *Shaughnessy*, 186 F.2d 580, 582 (2d Cir. 1951).

cured within the meaning of 8 U.S.C. 1451(a). See *United States* v. *Riela*, 337 F.2d 986 (3d Cir. 1964). See also *United States ex rel. Stapf* v. *Corsi*, 287 U.S. 129, 133 (1932); *Werblow* v. *United States*, 134 F.2d 791, 792 (2d Cir. 1943). In addition, because petitioner's naturalization was made possible by his misrepresentations in applying for a visa and because those misrepresentations were perpetuated in his application for naturalization, his naturalization was procured by misrepresentation or concealment within the meaning of 8 U.S.C. 1451(a).[13]

Whether petitioner's citizenship is considered to be illegally procured or procured by misrepresentation, the primary basis for its revocation is petitioner's false representations concerning his whereabouts during World War II. Accordingly, we agree that petitioner's wartime activities, specifically his guard duty at Treblinka, must be shown to be "material" facts within the meaning of 8 U.S.C. 1451(a). We submit that the undisputed evidence in this case establishes, under the proper legal standard, that petitioner willfully misrepresented material facts. Petitioner's own testimony establishes that he served as a guard at a Nazi death camp and that he deliberately concealed this fact, substituting a fictitious background, when

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[13] Although the statute speaks of the "concealment of a material fact or * * * willful misrepresentation," we assume that concealment, no less than misrepresentation, must be willful (see *Costello* v. *United States*, 365 U.S. 265, 272 n.3 (1961)) and that misrepresentation, no less than concealment, must relate to a material fact.

Neither point is of particular concern in the present case, for petitioner admitted that his deception was willful (J.A. 52), and whether the deception is labelled a misrepresentation or a concealment is, in this context, unimportant. He concealed his service with the Nazis and misrepresented his activities during that period. As the court of appeals characterized the matter, it was "misrepresentation by nondisclosure" (J.A. 106). We therefore use the terms "misrepresentation" and "concealment" interchangeably in this brief.

questioned about his wartime activities. Moreover, it is undisputed that, had petitioner told the truth, an investigation into the circumstances of his concentration camp service would have been conducted. Petitioner's misrepresentation was therefore "material" within the meaning of 8 U.S.C. 1451(a).

I. PETITIONER'S MISREPRESENTATION WAS MATERIAL UNDER 8 U.S.C. 1451(a)

A. A Misrepresented Fact Is Material If Disclosure Of The Truth Would Have Led To An Investigation That Might Have Revealed Facts Warranting Denial Of Citizenship

1. *The Courts have not Interpreted the Materiality Standard of 8 U.S.C. 1451(a) to Require Proof of Ultimate Facts Warranting Denial of Citizenship*

a. The leading case on what constitutes materiality for purposes of revoking citizenship under 8 U.S.C. 1451(a) is *Chaunt* v. *United States*, *supra*. In *Chaunt*, the government brought a denaturalization action against a citizen who had been naturalized in 1940, alleging that he had concealed at that time a record of three arrests for handbilling, illegal demonstration and breach of the peace that had occurred in 1929 and 1930. The government contended that these arrests were "material" facts because, had they been disclosed, the government would have investigated the arrests and discovered that they had resulted from Chaunt's activities as an official of the Communist Party, an affiliation that presumably would have disqualified him from citizenship. As it was, the government had never investigated Chaunt to determine whether he had been a Communist Party official.

Although Chaunt admittedly had lied about his arrest record, this Court reversed the district court's order revoking citizenship. The Court emphasized that "[f]ailure to give frank, honest, and unequivocal answers * * * is a serious matter" for two reasons. 364 U.S. at 352. "Suppressed or concealed facts, if known, might in and of themselves justify denial of citizenship. Or disclosure of the true facts might have led to the discovery of other facts which would justify denial of citizenship." *Id.* at 352-353. However, the Court rejected the government's contention that truthful answers from Chaunt would have prompted an investigation that might have revealed that Chaunt was a Communist Party official in 1929, and it therefore found that Chaunt had not concealed "material" facts.

The Court did not minimize the importance of Chaunt's Communist affiliation, but it was not persuaded that an investigation would have followed from disclosure of the arrests. The Court remarked that Chaunt had disclosed his membership in the International Workers' Order (IWO), which the Court assumed to be a Communist front, yet that disclosure had not prompted an investigation into Chaunt's Communist connections. The Court was unwilling to believe that the "tenuous line of investigation that might have led from the arrests to the alleged communistic affiliations" was really material in light of the government's inaction when faced with more significant evidence of that affiliation. 364 U.S. at 354-355.

The Court was careful to note that had Chaunt not disclosed his affiliation with the IWO, the "failure to report the arrests would have had greater significance. It could then be forcefully argued that failure to disclose the arrests was part and parcel of a project to conceal a Communist Party affiliation." 364 U.S. at 355. On the facts

before it, however, the Court concluded that the government had failed to show "either (1) that facts were suppressed which, if known, would have warranted denial of citizenship or (2) that their disclosure might have been useful in an investigation possibly leading to the discovery of other facts warranting denial of citizenship." 364 U.S. at 355.

The lesson of *Chaunt* is that citizenship may not be revoked for concealing facts that, if disclosed, would neither have been grounds for denying citizenship nor have triggered an investigation. Concealed facts are material, said the Court, only if they would have justified denial of citizenship "in and of themselves" or if their disclosure "might have led to the discovery of" disqualifying facts. 364 U.S. at 353. Thus, *Chaunt* describes two independent tests of materiality, and the Court's use of the disjunctive establishes that denaturalization may follow from a concealment of facts that are material under either one of the two tests. *Id.* at 353, 355.

The Court had occasion a few months later to apply the first *Chaunt* test in another denaturalization action. In *Costello* v. *United States*, 365 U.S. 265 (1961), the applicant for naturalization had sworn that his occupation was "real estate," whereas the district court found that his occupation was in fact bootlegging. This Court found that Costello had concealed the fact that he was a bootlegger and that a known bootlegger probably would not have been naturalized. Accordingly, it ruled that the district court correctly determined that Costello "had '[s]uppressed or concealed facts * * * [which] * * * if known, might in and of themselves justify denial of citizenship.' *Chaunt* v. *United States*, *supra*, at 352–353." 365 U.S. at 272. Because the first *Chaunt* test applied, the Court had no occasion to consider materiality under the second *Chaunt* test.

The meaning of the first *Chaunt* test is clear and is not disputed in this case.[14] Concealed facts are material if they would have been grounds for denial of citizenship. There has been some uncertainty, however, over the precise meaning of the second *Chaunt* test. See generally Comment, *Misrepresentation and Materiality in Immigration Law—Scouring the Melting Pot*, 48 Fordham L. Rev. 471 (1980).

Materiality is shown under the second *Chaunt* test if "disclosure might have been useful in an investigation possibly leading to the discovery of other facts warranting denial of citizenship." *Chaunt* v. *United States*, *supra*, 364 U.S. at 355. This formulation, particularly the use of the word "possibly," arguably leaves some ambiguity as to what must be shown as likely to have ensued had the applicant told the truth. There are, we believe, two separate questions to be addressed: (1) the likelihood that an investigation would have been conducted, and (2) if an investigation had been conducted, the likelihood that it would have led to the discovery of facts that would have warranted denial of citizenship. Thus, a possible articulation of the test, in the way most conducive to a finding of materiality, would be that a concealed fact is material if, had it been revealed, an investigation *might* have been conducted that *might* have yielded facts warranting a denial of citizenship. At the other extreme, the narrowest definition of materiality under the second *Chaunt* test would require the government to prove that an investigation *would* have been conducted that *would* have yielded facts warranting a denial of citizenship.

We do not contend that the first articulation of the test suggested above is proper; such a loose reading of the

[14] Its application to the facts of this case, however, is contested (see pages 39–42, *infra*).

statutory requirement of materiality would be an inadequate safeguard of citizenship. On the other hand, the second articulation is too narrow, for it would always require proof of the disqualifying facts themselves and hence would do nothing to discourage fraud. Rather, we submit, the appropriate test under the statute is the intermediate one suggested in *Chaunt* and embraced by the court of appeals—concealed or misrepresented facts are material if their disclosure *would* have led to an investigation that *might* have revealed facts warranting denial of citizenship. Under this test, the government is not required to prove the existence of "ultimate facts"[15] that would have resulted in a denial of citizenship, but it must show that the concealed facts, if revealed, would have prompted an investigation that might have revealed "ultimate facts." This approach strikes the proper balance between two recognized and important interests: (1) the citizen's interest in retaining the "priceless treasure" of citizenship (*Johnson* v. *Eisentrager*, 339 U.S. 763, 791 (1950) (Black, J., dissenting)) against insubstantial claims of irregularity and (2) the government's interest in obtaining "frank, honest, and unequivocal answers" (*Chaunt* v. *United States*, *supra*, 364 U.S. at 352) on which it must base the solemn decision to extend United States citizenship to an alien.

The court of appeals adopted this view of the materiality requirement, holding that the second *Chaunt* test requires "only that the government prove by clear and convincing evidence that disclosure of the true facts would have led the government to make an inquiry that might have uncovered other facts warranting denial of citizenship" (J.A.

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[15] As did the court of appeals (J.A. 113), we use the phrase "ultimate facts" to refer to facts that, in and of themselves, justify denial of citizenship.

113; see also J.A. 115-116 n.6).[16] The district court, by contrast, construed *Chaunt* to require that the government prove not only that revelation of the true facts would have prompted further investigation, but also the existence of ultimate facts warranting denial of citizenship (J.A. 93-94). Petitioner urges this Court to adopt the district court's view (Br. 13-14), which is essentially equivalent to the second extreme described above.[17] As the court of appeals pointed out (J.A. 113), however, this view is an exceedingly strained interpretation of *Chaunt*. The language of *Chaunt* plainly indicates that the focus of the second test is whether disclosure would have led the government to conduct a relevant investigation, one that "possibly" would have led to facts justifying a denial of

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[16]Thus, petitioner mischaracterizes the court of appeals' holding in stating (Br. 14) that it held that the government need only show that disclosure of the concealed facts *might* have led to an investigation.

[17]The district court nodded toward what we believe to be the correct, if somewhat oversimplified, construction of *Chaunt* in noting that the word "possibly" in the Court's formulation "could be read to modify the entire phrase, thus supporting the Government's interpretation that existence of facts warranting denial of citizenship need only be a possibility" (J.A. 93). But it rejected that reading, concluding that "if this were the intent of the [*Chaunt*] Court, it would have been clearer to state 'facts which might warrant denial'" (*ibid.*). In order to give some effect to the word "possibly," the court concluded that the word modified only the phrase "leading to the discovery of other facts" (J.A. 93-94). Presumably, the district court's formulation of the test therefore would not require the government to prove conclusively that the particular investigation prompted by full disclosure would have uncovered the ultimate facts. This technical distinction from the second extreme described above would be of little practical significance. It is most unlikely that the government, once having proved both that an investigation directed at eligibility would have occurred and the existence of ultimate facts demonstrating lack of eligibility, would be unable to convince a court that the investigation would have revealed those facts.

citizenship (J.A. 113; 364 U.S. at 353, 355). Indeed, the question on which the result in *Chaunt* turned was whether the truth would have prompted an investigation.

Petitioner correctly notes (Br. 13) that the district court's decision makes the government's burden "equally demanding" under both *Chaunt* tests. And petitioner criticizes the court of appeals' decision (Br. 20–21) for holding that denaturalization may be permissible under the second *Chaunt* test in circumstances where the first *Chaunt* test cannot be met. Petitioner thus exposes the profound shortcoming in his argument. Even though *Chaunt* clearly establishes two independent tests for materiality, petitioner and the district court interpret the second test in a manner that adds virtually nothing to the first test.

The crux of the first *Chaunt* test is that the government must prove the existence of a fact that made the defendant ineligible for citizenship. It must, of course, also show the concealment of that fact. Although the government can meet this test in some cases (see *Costello* v. *United States*, *supra*), the burden is a severe one because it is often impossible, particularly many years after citizenship is granted, to prove the existence of a disqualifying fact by clear and convincing evidence. By contrast, the second *Chaunt* test recognizes that a misrepresentation may be material even if it does not concern a matter that is, in and of itself, a ground for denial of citizenship. The focus of the materiality test, of course, must be on the misrepresented fact. Yet the district court's interpretation irrationally focuses on something quite different, requiring the government to prove the existence of a disqualifying fact just as it must under the more rigorous standard of the first test. In the words of the court of appeals (J.A. 113), the district court's interpretation "destroy[s] the utility of the second *Chaunt* test, since it would

require, as does the first *Chaunt* test, that the government prove ultimate facts warranting the denial of citizenship."[18]

b. The weight of authority strongly supports the court of appeals' decision. Prior to *Chaunt*, courts consistently focused on the importance of an investigation in determining an applicant's eligibility for citizenship. Accordingly, misrepresentations were held material whenever they forestalled an investigation relevant to eligibility that would have been conducted had the truth been told. See Comment, *supra*, 48 Fordham L. Rev. at 485–487. See also Appleman, *Misrepresentation in Immigration Law: Materiality*, 22 Fed. B.J. 267, 270–272 (1962) (deportation).

In *Corrado* v. *United States*, 227 F.2d 780 (6th Cir. 1955), cert. denied, 351 U.S. 925 (1956), for example, the defendant argued that denaturalization was unwarranted because the arrests and misdemeanor convictions that he had concealed were not grounds for denial of citizenship. The court of appeals disagreed, stating (227 F.2d at 784):

> Upon analysis, the issue is not whether naturalization would have been denied appellant had he revealed his numerous arrests, but whether, by his false answers, the Government was denied the opportunity of investigating the moral character of appellant and the facts relating to his eligibility for citizenship. * * * Where fraud has been practiced by the alien in procuring citizenship, it is not required that the Government in a denaturalization proceeding should meet the standard necessary for conviction in a criminal case. It will suffice to show that the applicant lied concerning a material fact which, if revealed, might have prevented his acquisition of citizenship.

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[18] Moreover, the consequence of the district court's interpretation is that the materiality of a false statement is not determined as of when it was made. Rather, it depends upon the government's ability to prove a

Corrado was followed in *United States* v. *Montalbano*, 236 F.2d 757, 759–760 (3d Cir.), cert. denied, 352 U.S. 952 (1956), where the court likewise rejected the defendant's claim that his concealed arrest record would not have been grounds for denial of citizenship. See also *United States* v. *Chandler*, 152 F. Supp. 169, 177 (D. Md. 1957); *United States* v. *Lumantes*, 139 F. Supp. 574, 575 (N.D. Cal. 1955), aff'd, 232 F.2d 216 (9th Cir. 1956).

Chaunt did not purport to disturb this established rule. Indeed, the language used in *Chaunt*, "possibly leading to the discovery of other facts warranting denial of citizenship" (364 U.S. at 355), is not significantly different from that used in *Corrado*. The commentators thus have uniformly recognized that *Chaunt* does not require the government to prove ultimate facts if it proves that the truth would have prompted an investigation relevant to eligibility. See Comment, *supra*, 48 Fordham L. Rev. at 491–493; Appleman, *supra*, 22 Fed. B.J. at 271–272; 3 C. Gordon & H. Rosenfield, *Immigration Law and Procedure* § 20.4b, at 20–14 (rev. ed. 1979). In addition, shortly after *Chaunt* was decided, the Attorney General, who is charged with the administration of the Immigration and Nationality Act and whose rulings on questions of law are controlling within the Executive Branch under 8 U.S.C. 1103(a), issued a ruling on materiality in the deportation context. *In re S- and B- C-*, 9 I. & N. Dec. 444 (1961). The Attorney General concluded that the government may satisfy the materiality requirement either by proving ultimate facts or by showing that the misrepresentation "tend[ed] to shut off a line of inquiry

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different fact, which may diminish over time. In this case, for example, no one but petitioner will ever know with certainty, at this late date, the nature of his service as a guard at Treblinka. But if his concealment of that service was material when made, the disappearance of inculpatory evidence with the passage of time should not render it immaterial.

which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded." *Id.* at 447. This test, the Attorney General noted, was consistent with the *Chaunt* test for denaturalization. *Ibid.*[19]

Post-*Chaunt* decisions of the courts of appeals have continued to apply the materiality standard used by the court of appeals in this case. In *United States* v. *Oddo*, 314 F.2d 115 (2d Cir.), cert denied, 375 U.S. 833 (1963), the district court found that the defendant had concealed his arrest record when he applied for naturalization, and it revoked his citizenship. On appeal, the defendant argued that his arrest record would not have been grounds for denial of citizenship, advancing the same construction of *Chaunt* that petitioner urges here. The Second Circuit squarely rejected this construction, holding (314 F.2d at 118):

> Failure to disclose a record of prior arrests, even though none of those arrests by itself would be a sufficient ground for denial of naturalization, closes to the Government an avenue of enquiry which might conceivably lead to collateral information of greater relevance. United States v. Montalbano * * *; Corrado v. United States * * *. As the Court said in Chaunt, "An arrest, though by no means probative of any guilt or wrongdoing, is sufficiently significant as an episode in a man's life that it may often be material at least to further enquiry." 364 U.S. at 354, 81 S. Ct. at 150. Oddo denied the Government the opportunity to make that enquiry.

See also *United States* v. *D'Agostino*, 338 F.2d 490 (2d Cir. 1964) (fact that defendant was married when he claimed to be single held material).

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[19] This Court has recently relied on a comparable pronouncement by the Attorney General, construing a citizenship decision this Court had rendered, in determining the reach of that decision. *Vance* v. *Terrazas*, No. 78-1143 (Jan. 15, 1980), slip op. 9.

Two other circuits have also read *Chaunt* not to require proof of ultimate facts. In *Langhammer* v. *Hamilton*, 295 F.2d 642 (1st Cir. 1961), an action by an alien to avoid deportation, the alien argued that his former membership in the Communist Party was "involuntary," and thus his deliberate failure to disclose it on his visa application was not material because disclosure would not have resulted in his exclusion. The court held that this argument was foreclosed by *Chaunt*, stating (295 F.2d at 648):

> In essence [appellant] argues that a misrepresentation is not material unless the alien would definitely have been excluded on the true facts. We do not believe this to be the law and, consequently, had we now agreed that appellant's membership was involuntary, such determination would not have operated *nunc pro tunc* to render his omission nonmaterial.

Similarly, in *Kassab* v. *INS*, 364 F.2d 806 (6th Cir. 1966), another deportation case, the court held, citing *Chaunt*, that it was not necessary that "it be shown that petitioner *would not* have procured his visa if the true facts had been known." *Id.* at 807 (emphasis in original).

Against this weight of authority, petitioner contends (Br. 14–17) that the Ninth Circuit's decisions in *United States* v. *Rossi*, 299 F.2d 650 (1962), and *La Madrid-Peraza* v. *INS*, 492 F.2d 1297 (1974), support his position. These cases, however, did not involve interpretations of the second *Chaunt* test. In *Rossi*, the defendant, an Italian, applied for a visa in the name of his brother, a Chilean, in order to avoid the Italian immigrant quota. If, in fact, the Italian quota had been oversubscribed, the suppressed facts as to defendant's identity, if known, would have excluded him from entry, and thus the misrepresentation would have been material under the first *Chaunt* test. The court, however, found that the government's evidence did not establish that the Italian quota had been

oversubscribed. This resolved the crucial issue in the case. There was no allegation by the government that, had Rossi revealed his true identity, an investigation would have ensued; the institution of an investigation does not depend upon whether an applicant is Chilean or Italian. Accordingly, the *Rossi* court had no occasion to consider the second *Chaunt* test.[20]

The Ninth Circuit followed *Rossi* in *La Madrid-Peraza*, a deportation case. Again, it considered only the first *Chaunt* test. The defendant had overstated the wages she was to receive in the United States. Because the government did not establish that the wages she actually did receive were below the prevailing rate for similarly situated American workers, which would have been grounds for denying admission, the court held that the misrepresentation was not material. As in *Rossi*, the government did not contend that the defendant's misrepresentation foreclosed an investigation that might have uncovered disqualifying facts; thus, the court had no reason to address the second *Chaunt* test.[21] No court of appeals decision,

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[20] The court rejected the argument that *any* intentional misrepresentation was grounds for denial of citizenship. 299 F.2d at 652. In so doing, the court stated that a fact is material only if "it is one which, if known, would have justified a refusal to issue [a] visa." *Id.* at 652–653. This statement, of course, paraphrases the first *Chaunt* test. In the absence of a contention that the truth would have prompted an investigation, it appears unlikely that the Ninth Circuit intended that statement to encompass the second *Chaunt* test as well.

[21] A recent unpublished decision, *Nagy* v. *United States*, No. 77–4053 (9th Cir. May 13, 1980), indicates that the Ninth Circuit's interpretation of the second *Chaunt* test is in accord with that of the court of appeals here. In upholding a denial of naturalization, the court found that, although disclosure of the applicant's complete arrest record for homosexual offenses would not have been grounds for denial of citizenship, it "might have * * * led to further inquiry * * * [that] might have disclosed other instances of homosexual activity sufficient to preclude a finding of good moral character." Slip op. 3. This showing, the court held, satisfied the materiality standard of *Chaunt*.

therefore, supports petitioner's interpretation of the second *Chaunt* test.[22]

2. *A Requirement that the Government Prove Ultimate Facts in Every Denaturalization Proceeding Would Defeat Congressional Intent*

The court of appeals' interpretation of *Chaunt* is consistent with Congress' intent to discourage fraud in immigration and naturalization proceedings. The United States has naturalized large numbers of persons because of a liberal statutory policy of admitting aliens to citizenship. As a result, the government in such proceedings has relied for the most part on the duty of applicants to make truthful responses to questions it deems significant in determining eligibility for naturalization, rather than undertaking the burdensome task of investigating every application. Truthful answers to such questions are thus essential to the effective functioning of the system. As the Court stated in *Chaunt*, "[f]ull and truthful response to all relevant questions required by the naturalization procedure is * * * to be exacted, and temporizing with the truth must be vigorously discouraged. Failure to give frank, honest,

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[22] Petitioner cites two other cases in support of his position. In *United States* v. *Riela*, 337 F.2d 986 (3d Cir. 1964), the government proved that the defendant concealed the fact that he had entered the United States illegally. This misrepresentation was clearly material under the first *Chaunt* test, and the court did not purport to consider the second test. In *United States* v. *D'Agostino*, *supra*, the defendant "raise[d] no issue with respect to the materiality of" his misrepresentation. 338 F.2d at 491. As petitioner notes (Br. 16), the court quoted from *Chaunt* in finding that petitioner's concealment of his marital status was material because its disclosure "might have led to the discovery of other facts which would justify denial of citizenship." *Ibid.* *D'Agostino* strongly supports the court of appeals' interpretation in this case because, needless to say, being married is not, in and of itself, a reason for denying citizenship. The misrepresentation was material only because the truth might have led to the discovery of other facts warranting denial.

and unequivocal answers to the court when one seeks naturalization is a serious matter." 364 U.S. at 352.

Congress has clearly manifested its desire to discourage false representations by applicants for immigration and naturalization. The fraud portion of 8 U.S.C. 1451(a) was amended to its present form in order to make clear that false swearing before a naturalization officer is a ground for denaturalization. S. Rep. No. 1515, 81st Cong., 2d Sess. 756–769 (1950). Other statutory provisions also reflect this policy. For example, any alien who seeks to enter the United States by fraud is ineligible for admission. 8 U.S.C. 1182(a)(19). In amending this section in 1952, Congress emphasized that "every effort is to be made to prevent the evasion of law by fraud." H.R. Conf. Rep. No. 2096, 82d Cong., 2d Sess. 128 (1952).[23] Moreover, Section 10 of the Displaced Persons Act itself provided that persons who made misrepresentations for the purpose of gaining admission to the United States as displaced persons would thereafter be ineligible for admission. 62 Stat. 1013. The "materiality" requirement urged by petitioner flies in the face of this strong policy. Indeed, not only would petitioner's interpretation of the materiality requirement of 8 U.S.C. 1451(a) not discourage misrepresentations, it would actually *invite* persons seeking to immigrate or become naturalized to conceal the truth.

Requiring the government in every denaturalization case to prove the existence of ultimate facts that, in and of themselves, warrant denial of citizenship can only encourage an applicant to lie about his background, thereby forestalling an investigation that might reveal those ulti-

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[23] See also 18 U.S.C. 1015(a) (criminal offense to make false statement in a naturalization proceeding); 8 U.S.C. 1325 (criminal offense for alien to enter United States through misrepresentation); 8 U.S.C. 1101(f)(6) (person who gives false testimony to obtain immigration or naturalization benefits is not of good moral character).

mate facts at a time when the applicant has the burden of proving eligibility. See *Berenyi* v. *Immigration Director*, 385 U.S. 630, 636–637 (1967).[24] In many cases, the lie will never be discovered and the applicant will retain his fraudulently obtained citizenship without a challenge. But even if his deception is eventually bared, the applicant is better off for having lied because the passage of time no doubt will have made it more difficult for the government to uncover the disqualifying facts—and the burden of proving ineligibility, by clear and convincing evidence, will have shifted to the government. See *Schneiderman* v. *United States*, *supra*, 320 U.S. at 125, 158.

As the court of appeals remarked, "an applicant with something to hide would have everything to gain and nothing to lose by lying under oath" (J.A. 114). The worst that could happen is that (a) his deception would later be discovered, (b) the government would then investigate and be able to turn up disqualifying facts, and (c) the government would then be able to prove those facts in a denaturalization trial by clear and convincing evidence. If the government cannot meet all three requirements (and each one poses separate and difficult problems that are exacerbated by the passage of time), the applicant is rewarded for his deception. See *Ganduxe y Marino* v. *Murff*, 183 F. Supp. 565, 567 (S.D.N.Y. 1959), aff'd, 278 F.2d 330 (2d Cir. 1960). And if the government does succeed on all three scores, the defendant is no worse off than he would have been had he told the truth at the outset. He is, in fact, better off because he has enjoyed the benefits of citizenship for some length of time. Surely Congress cannot have intended this incentive to misrepresent the truth,

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[24] Section 10 of the Displaced Persons Act, under which petitioner was admitted, provided that "[t]he burden of proof shall be upon the person who seeks to establish his eligibility under this Act." 62 Stat. 1013.

and this Court should not countenance such a perverse interpretation of the law.

This case presents a prime example of what would result from such an ill-advised interpretation. The heart of petitioner's defense, both at trial and before this Court, is that his service at Treblinka was involuntary and that he committed no atrocities there. Setting the contrary evidence aside for the moment (see pages 6-7, *supra*), let us assume *arguendo* that an applicant could conceivably have established the involuntary nature of his concentration camp guard service and that such a showing would have made him eligible for a visa. By refusing to reveal that he had been a concentration camp guard at all, petitioner unquestionably prevented the government from conducting an investigation into the facts and circumstances of his Treblinka service. Certainly, at least a possibility existed that such an investigation would have proven that petitioner's service was voluntary or that he committed atrocities. Even the district court recognized both that, had petitioner revealed the truth, an investigation would have been conducted and that voluntary service or committing atrocities would have disqualified petitioner from entering the United States (J.A. 93). Thus, petitioner can prevail in this action only if it is assumed that the investigation, which petitioner himself prevented, would have exonerated him.[25] This position is untenable. Its adoption

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[25] If petitioner is in fact innocent of the charges, he may be able to prove that the investigation would have exonerated him. In that case, he would not be subject to denaturalization under the court of appeals' interpretation because he would have rebutted a necessary element of the government's proof—that the investigation might have led to disqualifying facts. The fact that the burden of making this showing is placed on petitioner is quite appropriate. It merely restores the burden of proof that petitioner bore when he applied for admission to the United States and for naturalization, a burden that he never satisfied, except by deceit.

would convert the solemn requirement of truthful and candid answers into a sham.

As the court of appeals stated, petitioner's "assertion before the district court that his guard service was involuntary comes thirty years too late" (J.A. 117). Neither a district court nor this Court can sit as an investigating commission to determine if petitioner's service at Treblinka in 1943 was voluntary or compelled. That inquiry (continuing our assumption *arguendo* that the issue was relevant at the time of petitioner's application for admission) ought to have been conducted in 1949 by the Displaced Persons Commission and the immigration authorities, for they had the responsibility, the resources and the expertise to do it, and the evidence on the matter was relatively accessible to them. The reason such an inquiry was not undertaken was that petitioner lied. Petitioner's deception has now been revealed, and he asks the courts to rule that his Treblinka service was in fact innocent. This Court should reject the contention that the government is now bound to prove the voluntariness of petitioner's Nazi service by clear and convincing evidence, when he intentionally concealed the facts that would have prompted an inquiry on that very issue 30 years ago.

Furthermore, petitioner's position not only imputes to Congress an irrational intent to establish an incentive to lie, but also makes a portion of the denaturalization statute redundant, contrary to the "elementary canon of construction that a statute should be interpreted so as not to render one part inoperative." *Colautti* v. *Franklin*, 439 U.S. 379, 392 (1979). See also *Reiter* v. *Sonotone Corp.*, 442 U.S. 330, 339 (1979); *United States* v. *Campos-Serrano*, 404 U.S. 293, 301 n.14 (1971). 8 U.S.C. 1451 (a) establishes two separate grounds for denaturalization: (1) illegal procurement or (2) willful concealment or misrepresentation of a material fact. Yet adoption of petitioner's

interpretation would make the fraud provision superfluous; the government would be required to establish illegal procurement as a prerequisite to establishing procurement by a material misrepresentation.

As noted above (see page 17, *supra*), citizenship is illegally procured if "some statutory requirement which is a condition precedent to naturalization is absent at the time the petition [for naturalization is] granted." H.R. Rep. No. 1086, *supra*, at 39. But to establish ultimate facts warranting denial of citizenship, as petitioner's materiality definition requires, the government must prove precisely that the individual lacked some statutory requirement for naturalization. Thus, the procurement of citizenship through a material misrepresentation would, by definition, constitute illegal procurement. If, in order to establish a material misrepresentation, the government must first make a showing that is sufficient to prove illegal procurement, the misrepresentation provision would lose all significance. Put another way, petitioner's interpretation gives no effect to Congress' manifest intent to permit denaturalization for material misrepresentations in naturalization proceedings. See *Costello* v. *United States*, *supra*, 365 U.S. at 271–272 n.3; S. Rep. No. 1515, 81st Cong., 2d Sess. 756, 769 (1950). If persons may be denaturalized only when it is shown that they were ineligible for citizenship in the first place, their fraudulent behavior itself, no matter how egregious, is of no significance for citizenship purposes.

Materiality of a false statement is not a concept unique to immigration law. Congress' failure to provide any definition of "material" in 8 U.S.C. 1451(a) suggests that the word should be given its ordinary statutory meaning. Numerous criminal statutes contain materiality standards, notably the perjury statutes, 18 U.S.C. 1621 (false statement as to a "material matter") and 18 U.S.C. 1623 (false

"material declaration" before a court or grand jury), and the false statement statute, 18 U.S.C. 1001 (concealment of a "material fact" in a matter within the jurisdiction of a department or agency of the United States). Because these statutes provide criminal sanctions, their definition of "material" should, if anything, be narrower than that in the immigration field. Yet the materiality standard for these criminal offenses is significantly broader than the standard that petitioner advances as the proper one under 8 U.S.C. 1451 (a).

The standard of materiality under 18 U.S.C. 1623 and 18 U.S.C. 1621 is the same. *United States* v. *Lardieri*, 497 F.2d 317, 319 (3d Cir. 1974). Because of its investigatory purpose, the grand jury is perhaps most closely analogous to the citizenship investigation involved here. A false statement before the grand jury is material if it "would have the natural effect or tendency to influence, impede, or dissuade the Grand Jury from pursuing its investigation. * * * The false statements need not actually impede the investigation." *United States* v. *Gremillion*, 464 F.2d 901, 905 (5th Cir.), cert. denied, 409 U.S. 1085 (1972). See also *United States* v. *Di Fonzo*, 603 F.2d 1260, 1266 (7th Cir. 1979) (similar standard under 18 U.S.C. 1001). Moreover, "leads to additional facts may be material even though they do not directly reflect on the ultimate issue being investigated." *United States* v. *Lardieri*, *supra*, 497 F.2d at 319. See also, *e.g.*, *United States* v. *Berardi*, No. 79-1434 (2d Cir. June 19, 1980), slip op. 3667-3669; *United States* v. *Tyrone*, 451 F.2d 16 (9th Cir. 1971), cert. denied, 405 U.S. 1075 (1972).

In the grand jury context, then, the focus of the materiality test is the effect that the false statement has on the grand jury's *investigation*; it is irrelevant whether it would have affected that body's ultimate determination. There is no reason to imply a congressional intent to make

the materiality standard under 8 U.S.C. 1451(a) more stringent than that under these criminal statutes. Indeed, because false statements under oath in naturalization proceedings constitute a criminal offense under 18 U.S.C. 1015(a),[26] petitioner's position leads to the absurd result that a person who procures his citizenship by a misrepresentation would be immune from the civil consequence of denaturalization unless "ultimate facts" can be proven, yet would be subject to criminal penalties, including imprisonment, for the very same misrepresentation.

B. Petitioner Willfully Misrepresented A Material Fact In Concealing His Service At Treblinka

It is undisputed that petitioner concealed the fact of his service at Treblinka. He testified at length about his experience there (J.A. 40–51; R. 1297–1341). He also admitted that he falsified his whereabouts during the war when he sought a visa to enter the United States (J.A. 51–54). At no time prior to this litigation did petitioner tell the truth about the three years of his life between 1942 and 1945. At trial, petitioner admitted that he gave this false information "willingly" (J.A. 52). We submit that these misrepresentations were "material" within the meaning of 8 U.S.C. 1451(a) and that the court of appeals was correct

[26]The standard of proof under this statute is essentially the same as for perjury. *Bridges* v. *United States*, 346 U.S. 209, 222 (1953). Accordingly, a materiality requirement analogous to that for perjury has been applied, although the statute on its face does not require materiality. See *United States* v. *Laut*, 17 F.R.D. 31, 34 (S.D.N.Y. 1955). The making of false statements to an immigration or naturalization officer would appear to be criminal under both the general perjury statute and the false statement statute as well. See 2, 3 C. Gordon & H. Rosenfield, *supra*, at §§ 9.35, 9.36, 21.5; *Tzantarmas* v. *United States*, 402 F.2d 163, 168 (9th Cir. 1968), cert. denied, 394 U.S. 966 (1969); *United States* v. *Flores-Rodriguez*, 237 F.2d 405, 408 (2d Cir. 1956).

in ordering petitioner's certificate of naturalization cancelled.

1. *Petitioner's Misrepresentation was Material Under the First Chaunt Test*

The reason that petitioner lied to the authorities in 1949 is apparent. Kempton Jenkins' testimony clearly establishes that, had petitioner told the truth, he would have been denied a visa.[27] Jenkins testified that, in his expert opinion, an applicant who had served as a concentration camp guard was ineligible for a displaced person visa (J.A. 38–39). He further testified that such was the "universal interpretation" of the Act by the vice-consuls who administered it (R. 768) and that he was "reasonably certain" that no concentration camp guard was ever legally qualified as a displaced person (J.A. 39).[28]

The legal basis for this determination was clear. Under the IRO Constitution, as incorporated into Section 2(b) of the Displaced Persons Act, ch. 647, 62 Stat. 1009, persons who "assisted the enemy in persecuting civil populations"

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[27] Petitioner testified (J.A. 52) that he lied because he did not want to go back to the Soviet Union. In fact, there was no realistic possibility in 1949 that he would have been repatriated to the Soviet Union. In any case, this claim does not excuse the lie; indeed, it reveals that petitioner understood that disclosing the truth would have prevented him from entering the United States. As the court of appeals stated, "the immigration law does not allow a defense that a material misrepresentation was motivated by fear of what might have resulted if the applicant had told the truth" (J.A. 118).

[28] As the district court noted (J.A. 95), the decision of the vice-consuls whether to issue a visa was, for all practical purposes, final. In theory, the vice-consul's decision could be overridden by the Consul General, but Jenkins knew of no such occurrence and there was no evidence that it ever happened (see R. 721–722). Thus, the vice-consuls' interpretation of the Act, which followed three months of training in its proper application by State Department officials (R. 720–721), was authoritative. See *Udall* v. *Tallman*, 380 U.S. 1, 16 (1965).

or who "voluntarily assisted the enemy forces" were not considered eligible displaced persons.[29] The conclusion that concentration camp guards had "assisted the enemy in persecuting civil populations" was not arrived at lightly or in ignorance of the facts. Jenkins testified that concentration camp guards were "feared, hated, despised" because "they participated in brutalizing and dehumanizing the inmates regularly" (R. 758). In Jenkins' experience, there were no instances of friendly guards in concentration camps; in fact, only the most trusted auxiliaries were assigned to be guards in such camps (R. 759–760).

Jenkins also testified that he knew of no case where a camp guard attempted to convince officials that his service was involuntary (R. 760, 787–788, 807).[30] When former concentration camp guards who attempted to conceal their past were identified and confronted, they were given "full opportunity to describe to [the vice-consuls] the entire range of their motivations, involvement, and so forth" (R. 806). Jenkins testified that these guards "admitted that they had chosen to be a concentration camp guard rather than go into the labor division because living was

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[29]Jenkins did testify that applicants whose service in Axis labor battalions or military units was truly involuntary were eligible for visas (R. 748–751, 760, 784–787, 799, 819). Jenkins was asked by the court why a concentration camp guard who served involuntarily (assuming that was possible) should have been ineligible for a visa. He replied that "the crime against humanity that is involved in the concentration camp [service] puts it into a different category" (R. 823). This difference is highlighted by the omission of the word "voluntary" from the clause of the IRO Constitution that excludes persecutors of civilians. 62 Stat. 3051–3052.

[30]Jenkins' testimony on this subject is entitled to considerable deference, not only because of his first-hand experience in administering the Displaced Persons Act, but also because the practice of the Act's administrators was to circulate among the other vice-consuls the case file of any applicant shown to have been a camp guard (R. 826). Thus, Jenkins and the other vice-consuls were particularly well informed of the facts and circumstances surrounding the eligibility of former camp guards under the Act.

better, food was better * * *. Nobody claimed involuntary, in fact. They had lots of tortured explanations as to why, but nobody said 'I was forced to be a camp guard'" (R. 807). It seems apparent that former camp guards knew—in 1949—that a defense of involuntary service would have been incredible on its face.

Jenkins' testimony on all these points was uncontroverted. His credentials as an expert on the operation and administration of the Displaced Persons Act were established, and his status as an expert was not objected to by petitioner (J.A. 37–38). His testimony clearly establishes on this record that had petitioner disclosed, in 1949, the fact of his service at Treblinka he would have been denied a visa under the Act. Accordingly, the evidence in this case demonstrates that petitioner concealed a fact material under the first *Chaunt* test—a fact that, in and of itself, would have resulted in the denial of a visa and citizenship to petitioner. The district court's conclusion, based upon no evidence in the record and in total disregard of Jenkins' testimony,[31] that petitioner would have

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[31] The district court stated that there were "a number of inaccuracies" in Jenkins' testimony and that therefore his testimony must be considered "in the light of all the evidence" (J.A. 86). These asserted inaccuracies concerned peripheral remarks that Jenkins made about such matters as the color of the guards' uniforms during the war, their insignia, and their leave privileges (J.A. 87). Jenkins, of course, was offered as an expert not on the details of the concentration camps but on the operation and administration of the Displaced Persons Act, about which he had extensive first-hand experience. He testified on cross-examination that his opinion that there were no involuntary concentration camp guards was based on experience "in the field" (R. 788).

The district court alleged only one "discrepancy" in Jenkins' testimony in his area of expertise. According to the court, Jenkins testified that the "kapos"—Jewish supervisors in the camps—were excludable under the Displaced Persons Act, while the survivors who testified at trial defended the actions of the kapos as humane and mild (J.A. 87–89). Even if Jenkins did so testify, this is no "discrepancy"—

been admitted to the United States in 1949 because his service was involuntary is clearly erroneous.[32]

2. *The District Court's Findings Establish that Petitioner's Misrepresentation Was Material Under the Second Chaunt Test*

The district court specifically found that if petitioner had disclosed his service at Treblinka, "it certainly would have prompted an investigation by the Vice-Consul to determine whether defendant committed atrocities at Treblinka or served voluntarily as a guard, or was otherwise excludable from admission" (J.A. 93). Accordingly, as the court of appeals found (J.A. 117), the government clearly and convincingly proved that defendant's misrepresentation was material under the second *Chaunt* test.[33]

Petitioner, however, attempts to analogize this case to *Chaunt*, contending (Br. 18) that disclosure of petitioner's Treblinka service would not have triggered an investigation because his disclosure that he had been at Poelitz did

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the survivors testified to what the kapos did in the camps, while Jenkins testified to what their status was under the Act. In fact, Jenkins noted that it was "a very difficult thing to determine" whether the evidence in cases of particular inmates justified a determination of collaboration (R. 828). Furthermore, Jenkins testified that he did not know of any specific case in which a "kapo" was denied a visa and had not personally handled any applications from kapos (R. 829).

[32] Because it held petitioner's misrepresentation to be material under the second *Chaunt* test, the court of appeals did not reach the question whether the evidence demonstrated materiality under the first test as well. If this Court disagrees with the court of appeals on the interpretation of the second test, it should either remand to the court of appeals for consideration of the applicability of the first *Chaunt* test or affirm the judgment on the ground that the first test has been satisfied. See, *e.g.*, *O'Leary* v. *Brown-Pacific-Maxon, Inc.*, 340 U.S. 504, 508 (1951).

[33] In this regard, the court of appeals did not overlook the district court's findings, as petitioner asserts (Br. 19), but in fact adopted them.

not trigger an investigation. This analogy is without substance. First, petitioner stated only that he was a forced laborer at Poelitz; he did not reveal that he had been a guard (J.A. 83, 85). But more important, petitioner ignores the fundamental difference between Poelitz and Treblinka. Poelitz was merely a city that contained many foreign laborers. There is no evidence that atrocities were committed at Poelitz and there was nothing unusual in petitioner's statement that he was employed there.[34] Treblinka, on the other hand, was a notorious extermination camp at which approximately 800,000 people were murdered. What occurred as a result of petitioner's statement that he was a laborer at Poelitz is no indication of what would have happened if he had disclosed his service as a guard at Treblinka.[35] The district court's finding that an investigation would have ensued, had petitioner told the truth, is unassailable.[36]

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[34] By 1944, more than 7 million foreign laborers were working in Germany. E. Homze, *Foreign Labor in Nazi Germany* 233 (1967).

[35] Whatever effect the disclosure of petitioner's Poelitz service could conceivably have had (the district court asserted that it would have triggered a "search of the records" (J.A. 93)), it certainly could not have suggested that an investigation be undertaken into whether petitioner committed atrocities at Treblinka, where the immigration authorities had no reason to suspect petitioner had ever been.

[36] Petitioner also objects (Br. 7, 17) that Vice-Consul Ralph Clark, who approved petitioner's visa, did not testify as to what he personally would have done had petitioner told the truth in 1949. We are informed that prosecuting attorneys sought the aid of the State Department in locating Clark but were told that the available records contained no information on his current whereabouts. (This fact, we note, illustrates the burden placed on the government in being forced to demonstrate what would have happened 30 years ago). Petitioner offered no objection at trial when Jenkins was proffered as an expert witness, and the Court should not permit him now to indulge in pure speculation that Clark might have testified that he would not have ordered an investigation.

II. THE DISTRICT COURT HAD NO EQUITABLE POWER TO REFUSE TO REVOKE PETITIONER'S CITIZENSHIP

The district court advanced an alternative ground for refusing to revoke petitioner's citizenship. Noting that "[t]his denaturalization proceeding is a suit in equity, * * * and equity demands the weighing of the rights of the parties in light of all the circumstances in order to arrive at a decision which is fair and just" (J.A. 98), the court concluded that, even if his misrepresentation was material, "the equities should be weighed in favor of [petitioner]" (J.A. 103). The court of appeals correctly held that the district court exceeded its authority in asserting this power.

The district court recognized that its theory was unprecedented (J.A. 100), but found authority for this power in the fact that "lower courts have exercised discretion in determining whether citizenship should be *granted*" (*ibid.*; emphasis added). As the court of appeals recognized, however, discretion to decide whether citizenship should be granted is one thing; an asserted "discretion" to excuse illegal or fraudulent procurement of citizenship is quite another. District courts necessarily and properly exercise discretion in determining whether an individual meets the requirements for naturalization, such as good moral character. "Once it has been determined that a person does not qualify for citizenship, however, the district court has no discretion to ignore the defect and grant citizenship" (J.A. 119). See *United States* v. *Ness*, 245 U.S. 319, 324 (1917). By the same token, once a district court determines that a citizen obtained his citizenship illegally or through fraud, it has no discretion to excuse the conduct. As this Court stated in *United States* v. *Ginsberg*, *supra*, 243 U.S. at 474–475:

> An alien who seeks political rights as a member of this Nation can rightfully obtain them only upon terms and conditions specified by Congress. Courts are without authority to sanction changes or modifications; their duty is rigidly to enforce the legislative will in respect of a matter so vital to the public welfare.
>
> * * * * *
>
> No alien has the slightest right to naturalization unless all statutory requirements are complied with; and every certificate of citizenship must be treated as granted upon condition that the Government may challenge it * * * and demand its cancellation unless issued in accordance with such requirements. If procured when prescribed qualifications have no existence in fact it is illegally procured; a manifest mistake by the judge cannot supply these nor render their existence nonessential.

Even assuming *arguendo* that a district court has the power in some circumstances to refuse to denaturalize someone because of equitable considerations, invocation of such a power in this case was plainly an abuse of discretion. Although the district court found that the government did not carry its heavy burden of proof, substantial evidence was introduced at trial that indicated that petitioner committed murder and other atrocities at Treblinka (see pages 8–9, *supra*). Moreover, it is undisputed that petitioner shot in the direction of escaping prisoners (J.A. 42, 50–51, 54) and misrepresented his whereabouts and activities during the war (J.A. 51–54). Against this background, no corresponding equities are put forth in petitioner's favor.[37]

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[37] Certainly petitioner has no claim of laches. In *Costello* v. *United States*, *supra*, a denaturalization suit was filed 30 years after citizenship had been granted, but the Court rejected the defendant's laches defense. The seven-year delay here is due solely to petitioner's misrepresentations and, as in *Costello*, it has worked to petitioner's benefit, not to his detriment. See 365 U.S. at 282.

The district court found that petitioner's record as a law-abiding resident in the United States was sufficient reason to permit him to retain his citizenship (J.A. 103).[38] This approach is unacceptable. Obedience to the law is the *minimum* expected of everyone, citizen and alien alike. A mere record of law-abiding conduct or productive labor in this country cannot serve as a basis for excusing the deception that enabled petitioner to enjoy such a life, much less erase the memory of petitioner's unspeakable misconduct during the war years. In short, there are no equitable considerations whatsoever that could distinguish petitioner's case from that of any other citizen who fraudulently obtains citizenship. The district court's interpretation of "equities" would assure aliens that they are welcome to enter the United States illegally and obtain their citizenship by fraud so long as they do not lead a life of crime once they arrive here. This view makes a mockery of our immigration and naturalization laws.

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[38] Petitioner's record as a United States resident is not completely unblemished, of course: he concealed his Treblinka service in his 1970 naturalization examination.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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